

January Session, 2009

Proposed Bill #5264
LCO #366

Referred to Committee on Environment
Introduced by Rep. Wright E., 41st District

An Act Protecting Municipally Acquired Open Space Land

Dear Members of the Committee on Environment:

This proposed legislation has the purpose of correcting what is now a large vacuum in effective governmental open space land protection in our State.

While the statutory mechanisms for land protection at the State level are generally sufficiently articulated to allow for permanent protection, the same is not true for lands municipalities acquire, whether through bonding or other referendum actions, and even though the specifically stated purpose of such local referenda are to permanently protect specified areas of land within the particular municipality.

While the municipal voter in a local referendum may believe he/she has assured permanent open space status for an identified local property, such is not the case under current interpretations of municipal authority. The claim that municipality action to protect land today cannot permanently bind future local legislative actions has been raised as an argument against permanent protection, despite what the voters today think their actions are insuring will be the case.

These are not isolated situations. Almost every local community can point to examples of land purchased purportedly for open space, agriculture or recreation use which then under later pressures on the local government abandons the original open space protection purposes, and substitutes other community facilities such as schools, police or fire stations, roads, or other public activities. This is not a new phenomenon. It is

ongoing. The undersigned, for example in his own community of Woodbridge, Connecticut offers the example of a large farm purchased by the Town a generation ago. A portion thereof has just been taken away from conservation purposes to be used for a volunteer fire department structure, despite the perception by many in Woodbridge that it was unique for the Town to have a significant area of open space so close to the center of Town, and that it would remain as such always. To the contrary, those with agendas other than open space protection look upon such openness in fact as the easiest place into which to place an alternate public facility.

This proposed legislation Bill #5264, therefore, is necessary because it elevates the municipally acquired open space to permanent protected status, consistent with the same approach as found in State open space protected properties acquired with State funds.

At the State level, land which has been dedicated for a public open space purpose may not be changed from that purpose unless by future specific action of the General Assembly. This proposed legislation intends to accomplish a comparable mechanism for protecting municipally acquired open space.

As a matter of good governmental policy, as well as protection of critical natural resources ill-equipped at self-defense, land so dedicated by the specific action of the people of a community through referendum should not be able by some later inconsistent governmental action destroy and undercut the original purpose. Only by requiring the long-tested procedure of requiring that dedicated lands be submitted to the General Assembly for a specific change should an earlier action be allowed to be changed to a non-conservation use. Even further, any such conversion should be allowed only by way of a cy pres system which provides alternate open space use in the community.

This proposed legislation system does not straight jacket a municipality in terms of how future land use will occur within its border. There is the responsibility in any referendum to

choose for permanent open space protection only those areas and natural features within the community which are truly worthy of such conservation protection purposes. Thus, a referendum can distinguish between property to be permanently protected, from property which is to be purchased but which retains the full range of future potential public purposes.

Another way to achieve permanent protection envisioned by this proposed Bill #5264 is by the Town conveying a conservation easement on the properties it acquires for permanent protection to a third party such as a private land holding conservation entity. At a minimum, the deed should say that where the Town holds both the fee and the conservation easement, they shall not be merged in any way.

Proposed Bill #5264 is a laudable effort which calls to mind the constitutionally based protection found in the New York Constitution whereby the Adirondack Region is designated as "forever wild". That protection has gone a far way to passing truly valuable open space resources onto future generations. It is the intent of this proposed Bill #5264 legislation to do exactly the same for crucial local natural features, because through so many examples shown to date this protective authority has been inadequate to protect the public who want, believe and deserve that the crucial natural heritage of their local community will be preserved.

Thank you for the opportunity to comment.

Peter B. Cooper, Esq.
51 Elm Street
New Haven, CT 06510
(203) 865-7380

February 17, 2009

PBC/Proposed Bill 5264